

"Review of Political Neutrality: A Re-Evaluation, by Roberto Merrill and Daniel Weinstock"

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Abstract

Review of a collection of essays dealing with the issue of political neutrality, its connection with liberalism and its tensions with moral perfectionism.

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Neutrality is often considered a key component of a plausible theory of justice, because in order to be acceptable from a plurality of perspectives, such a theory needs to treat all citizens as equals and neutrality towards the good appears as such a demand of impartiality. Nevertheless, political neutrality also often appears as implausible, because it seems that every state action is likely, consciously or not, to have a more positive impact on certain groups of people than on others and thus favour some, with regard to their convictions, at the expense of others.

The distinction made by Will Kymlicka and Charles Larmore between neutrality of effects and neutrality of aims and/or justifications thus appears essential – even if there are grounds for challenging it, as we shall see. The general principle of justificatory neutrality holds that “[...] no exercise of political power can be legitimately justified solely by the reason that one way of life is intrinsically superior to all others” (1). Otherwise, according to Ronald Dworkin – one of the first advocates of political neutrality, whose views on the topic evolved over the years – the state would fail to deliver the equal respect to which all citizens are entitled.

Respect is also what grounds Kwame Anthony Appiah’s conception of neutrality. His starting point – close to Dworkin’s – is that “[...] state acts should treat people of diverse social identities with equal consideration and or respect” (85). The state should thus be concerned about the impact of its policies on the perception of the value of diverse identities. Rather than demanding feigned agnosticism or avoidance to rely on controversial claims, neutrality as equal respect “[...] merely asks us to avoid offending the beliefs of minorities as much as we can” (88). The test Appiah offers for verifying whether a state act satisfies this kind of neutrality is the question: ‘would this person have been treated better had he or she not been regarded as a member of that group, or as a believer of that faith?’ He recognises, of course, that it may sometimes be difficult to answer this question. As a result, he examines several difficulties, none of them – in his opinion – undermining his proposal.

Appiah’s contribution seems to bring back the ideal of neutrality of effects into the debate. Why would the state try to avoid offending beliefs in the justifications of its policies and disregard the latter’s effects on people’s identities? Simon Clarke, interestingly, resists the almost unanimous rejection of such consequential neutrality. After having examined examples of state acts that can be neutral in their aims and justifications without satisfactorily capturing the ideal of neutrality, he suggests that neutrality of effects, properly understood, is plausible in addition to being desirable. It is plausible if what is targeted is not the absence of discriminatory “[...] effects of state action on the *outcomes* for people’s pursuit of conceptions of the good”, but “the effects upon people’s *opportunities*” (116; italics original). In other words, “[...] liberal neutrality means that government should ensure that the effects of its actions do not give more opportunities to some in their pursuit of *reasonable* [i.e. respecting the principles of justice] conceptions of the good” (118: italics original) – the reasonableness proviso being intended to secure the priority of justice over the good.

Targeting opportunities rather than outcomes seems more plausible, but it might still be the case that, as George Crowder puts it, “[...] any political arrangement [...] will emphasize some values at the expense of others” (125), favouring some conceptions of the good and thus affecting the opportunities of certain people to pursue their own. It is not clear from Clarke’s discussion why his view on neutrality would be *more* plausible than the justificatory or the intentional ones. Now, as Clarke suggests at the end of his paper, “[...] perhaps liberal neutrality consists in all three conditions: justificatory, intentional, and the form of consequential neutrality [he advocates]” (119). I would suggest, the state should perhaps *aim* as far as possible at neutrality of *effects*, as a matter of concern for everyone’s ability to live according to their ideal of the good – when it is compatible with the others’ – and *justify* its actions in a neutral way as a matter of respect for everyone holding reasonable views on the good – views respecting principles of justice, which may nonetheless be extravagant or non-conformist.

Beyond the debate on the various kinds of neutrality, this collection of essays interestingly challenges the traditional opposition between neutrality and perfectionism. Steven Wall, for example, advocates a modest account of neutrality, which he perceives as compatible with some degree of

perfectionism. Wall opposes a 'Restricted Neutrality Principle' to the common liberal principle of state neutrality, rejecting any kind of favouritism for some ideals of the good life. This allows the state to promote the good, but requires its neutrality only when facing equally worthwhile ideals of the good, i.e. ideals of a good human life that have adherents in the political community and "[...] cannot be ranked by reason as better or worse than one another" (62). This restricted principle is based on – and tied to the truth of – value pluralism, or the idea that "[...] the choice between some conflicting goods in some choice situations is not rationally determined" (59). Although a fair procedure of aggregation may sometimes have some appeal for the proportional allocation of state resources in the support of equally worthwhile ideals of the good, Wall claims, the concern for its citizens' sense of self-worth sometimes makes it necessary for the state, as a matter of respect, "[...] to avoid taking sides, and being seen to be taking sides" (77).

While several authors draw a similar distinction between controversial and noncontroversial ideals of the good life, arguing that neutrality is only demanded for what regards the former, Ruwen Ogien considers the distinction as irrelevant to the question of political neutrality. In his view, a morality based on the Harm Principle, which is supported by the common sense distinction most of us make between self-regarding and others-regarding actions, forbids us to want state action to promote "[...] any specific conception of the good life, even if this conception is *non-controversial*" (106; Ogien adds that it is probably unnecessary to promote non-controversial goods since, if they are indeed non-controversial goods, people will value them spontaneously.)

This is probably the most radical view one might hold regarding neutrality. Most of the contributors to this book try to challenge this view and they are probably justified in doing so. While the appeal to the common sense distinction between self and others used by Ogien is convincing, it is unclear why we could not imagine legitimate perfectionist state action when there is evidence that citizens might be misguided in their own judgements about what is best for them to do. Take the example of advertising and consumption. Should the state regard people's systematic preference for consumption over leisure as an authentic preference, not at all influenced by the way the economy is organised? Taking for granted that people's choices are free sometimes proves to be extremely damaging for them, and probably philosophically naïve too. If we are prompt to admit scepticism with respect to real freedom in labour contracts, why should we refrain from any kind of concern for the real freedom of people subjected to continuous psychological pressure towards consumption? Arguably, advertising might be considered as not harming people – but informing them, for example –, especially when one considers the how difficult it is to draw a strict line between genuine consumption choices and influenced ones. Yet there would appear to be many good reasons to be concerned about the effects of advertising on the kinds of lives that people 'choose' (see Gerald Cohen's discussion of the systematic bias of capitalism towards consumption in *Karl Marx's Theory of History: A Defence*. Oxford: Clarendon, 1978).

It seems important to me to observe that neutrality is not always impartial. When it is interpreted as simply refraining from action, it entails a protection of the status quo. But if the latter unjustly favours some people at the expense of others – the capitalists at the expense of the workers, or Christians at the expense of other believers –, impartiality seems to require intervention rather than abstention (see Cass Sunstein. *The Partial Constitution*. Cambridge, MA: Harvard University Press, 1993; Cécile Laborde. *Critical Republicanism: The Hijab Controversy and Political Philosophy*. Oxford: Oxford University Press, 2008).

In this line of thought, Arneson rejects the idea that the state should refrain from promoting controversial conceptions of the good. A state's abstention from action might not be sufficient for its neutrality, because some people may "[...] lack the resources necessary to achieve the reasonable goods they seek" (29). And according to Arneson's conception of justice – equal opportunity for welfare –, "[...] the resource share that is fair for an individual to have cannot be settled independently of considering the individual's particular traits and how those traits would interact with given resources in the individual's actual circumstances to generate opportunities to achieve a good quality of life" (30). Active promotion of some ways of life by the state might therefore be justified in order for certain people to be able to live according to certain standards.

Because he doubts that neutrality and perfectionism can be reconciled, Arneson also challenges the Rawlsian defence of neutrality based on political liberalism. He claims that Rawls' "[...] idea of fully rational persons holding starkly opposed ethical beliefs, aware of each other's rationality,

provides a stirring but incoherent picture of mutual toleration” (39). Perhaps such people are not ‘rational’, one might argue, but ‘reasonable’.

But if one can be both reasonable and mistaken, then the ‘reasonable rejectability test’ for principles of justice becomes undesirable, because it might imply that each principle could be rejected on such an account of reasonableness. Thus, if we care about the quality of individual’s judgments about justice, there is no reason why we should not care about it with respect to the good. As Arneson puts it, “[...] deferring to my mistakes, errors, and prejudices when these are leading me seriously astray is not respecting me as the limited partially rational agent I am” (42).

Providing support in this direction, George Sher suggests in his contribution that there are no more reasons to fear the imposition of a perfectionist view by a majority than majority tyranny with respect to justice. Thus, if we trust the wisdom of the many in relation to the former, why not also in relation to the latter? One argument – suggested by J.-S. Mill – is that people think more seriously about justice because their interests are at stake. But this argument fails, according to Sher, because you cannot say that people do not have an interest in trying to live according to the best ideals, or that personal interests are all that matters in a moral judgement – be it about justice or the good life. Perhaps we could oppose Sher’s democratic perfectionism nonetheless by observing that while we *need* principles of justice to organise social cooperation, a common conception of the good is *superfluous*, so it might be better to avoid imposing one, which is controversial – although majoritarian – to the whole community.

George Crowder bases his own defence of perfectionism on the relation between liberalism and value pluralism. He claims that all those who endorse the latter should also embrace the former, albeit a ‘moderate perfectionist’ version thereof. The basic idea – shared with Rawls – is that “[...] the most plausible political response to the deep plurality of values is a liberal response” (140). But in order to respect the plurality of values, one should want to *promote* the general values of diversity and autonomy in order for the citizens to be able to make the best rational choice – or ranking – among the plurality of other values. What is needed then is not neutrality, but a moderate liberal perfectionism, in a ‘spirit of accommodation’. Unfortunately, the discussion remains at a high level of abstraction and leaves us clueless regarding the kind of policies that might satisfy these aims.

Another interesting critique of political neutrality is provided by Colin Macleod. Reconstructing the Rawlsian ideal of public reason, he states that in order for that aim to succeed, it “[...] must be possible for persons who hold widely variant reasonable comprehensive doctrines to endorse the values that animate public reason without betraying, abandoning, or radically revising their comprehensive doctrine” (166). And in this perspective, neutrality does not appear as an appropriate ally. Firstly, because neutrality “[...] renders the justificatory resources available to public reason needlessly austere” (167), excluding values that are both important and non-controversial. Secondly, if it aims at an overlapping consensus, public reason will need to leave out not only conceptions of the good, but also “considerations of rightness” (169), because people also reasonably – according to him – hold conflicting views about the right. Thus, either public reason will be inclusive, or it will succeed in reaching a consensus. “Completeness comes at the expense of inclusion.” (174) In addition, Macleod underlines the practical difficulty of distinguishing conceptions of the good from considerations of justice. Therefore, he seems to conclude, political legitimacy will be better pursued if the set of good, admissible public reasons is not fixed in advance, but itself subjected to an inclusive public debate.

It seems to me that the debate on neutrality might make fruitful use of a distinction between questions with unknowable – yet existing – answers, on the one hand, and questions about which it is up to us to decide what the best answer is, on the other. ‘Is there a God?’ and – if there is one – ‘which one is it?’ belong to the first category of questions. ‘Is it bad to smoke’ or ‘is it bad to consume too much’ belong to the second category. Ogien (98-99) himself insists on the importance of distinguishing neutrality towards religious views and ethical views. I tend to agree. In the case of religious views, it will probably never be possible to reach an agreement, and people’s beliefs are so tied with their personal identity that both respect and intellectual honesty recommend state neutrality. But when it comes to the question of the good life, another approach might be more appropriate. The state could both exercise restraint when promoting controversial goods and still organise the conditions for a quality public deliberation on the good. It is not clear what a civilized political community gains from forbidding public discussions about the good life.

In line with these considerations, Peter de Marneffe offers an interesting and modest view on neutrality. He suggests that “[...] the principle of neutrality was originally advanced as a way of unifying a number of more specific principles of liberty – principles of freedom of expression, freedom of worship, sexual freedom, and other important liberties” (50). Nevertheless, all those specific liberties “[...] have less in common with each other than the unifying idea of neutrality suggests” (50). Therefore, although we have intuitive views on the distinction between neutral and non-neutral policies, we should not think that it is possible to draw a strict line between those categories. But the fact that neutrality is a blurred concept does not make the aims of what de Marneffe calls ‘legislative neutrality’ undesirable. If you consider that the liberties it aims at protecting are central and that their defence will not prevent morally justifiable policies, then you have all the reasons you need to defend the principle of legislative neutrality. Thus conceived, however, neutrality is not incompatible with policies often considered perfectionist, policies that rely on an “[...] objective conception of human interests” (54). It only excludes policies that aim at encouraging “[...] activities that are the most excellent, admirable, and fine” (55), and argue that individual liberty can be legitimately limited for that purpose.

This opens the door to a very convincing kind of perfectionism, such as the ‘egalitarian’ example defended by Christine Sypnowich in her long but illuminating contribution to the collection. Like many others, she rejects the undesirable idea that the state should abstain from promoting uncontroversial goods. But she goes further, suggesting that the reason why we value equality is because it allows individuals to flourish, i.e. to live lives that (i) they have chosen, (ii) are worthwhile and (iii) provide them with personal contentment. Therefore, the state should not only provide all citizens with the resources they need for that purpose; it should also “[...] promote a social and cultural environment conducive to wellbeing” (200). In this way, it would avoid both the implausible view of individual responsibility advocated by some neutralists and the intrusive paternalism of some perfectionists. A sense of autonomy matters for individuals’ selfrespect and well-being, yet it is important to recognise how much choices are influenced by the context of socialisation. An emancipatory state will thus support autonomy both by providing resources without intrusion into people’s lives and by shaping the environment of choice in order to make it possible for people to make *genuine autonomous* choices among *worthwhile* alternatives.

Having read the book – or the review –, the reader might be left wondering what use can be made of all these sophisticated philosophical considerations. The editors provide an excellent introduction, but no conclusion. And not surprisingly, since there is no consensus about the desirability and scope of political neutrality, or about its compatibility with perfectionism. It is possible, nonetheless, to make some concluding considerations. First, many arguments against neutrality or perfectionism tend to attack a mirage, an implausible version of the idea. But once the common sense qualifications are added, neutrality and perfectionism no longer seem to class of necessity. Second, all the discussants agree on the importance of a secular state protecting freedom of speech, association and conscience. That is the bottom line of the debate. They would also probably refuse a very thick perfectionist state education, telling people how to live. The disagreement then bears on the duties the state has beyond its basic commitment to freedom and autonomy. How much should it intervene in cultural and spiritual domains? How much does a commitment to autonomy require the inculcation of critical thinking and the regulation of the public sphere? What are the concrete distributive implications of an ambition of neutrality, taking effects into consideration? It seems to me that all these interesting questions could have been granted more practical attention in the book under review. Considering more policy proposals rather than mere principles might have shed a different light on the debate – and perhaps further alleviated the tension between liberal neutralists and liberal perfectionists. Nonetheless, this collection of essays constitutes a very interesting and stimulating insight into this important – though complicated – debate.

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